

(EXCERPTS)

SOUTH DAKOTA CODIFIED LAWS

ELECTIONS

CHAPTER 12-4

REGISTRATION OF VOTERS

12-4-42. Complaints filed under the Help America Vote Act

The State Board of Elections shall resolve any complaint filed under Section 402 of the Help America Vote Act of 2002, as of January 1, 2003, in accordance with the contested case provisions of chapter 1-26. The complaint shall be signed, notarized, and filed with the secretary of state. The board shall resolve the complaint within ninety days of its filing. The State Board of Elections may promulgate rules, pursuant to chapter 1-26, governing the procedure for the complaint process.

Source: SL 2003, ch 83, § 16.

12-4-43. Arbitration of complaints under Help America Vote Act--Appointment of arbitrator--Time for resolution

If the State Board of Elections does not resolve the complaint within ninety days of filing, the complainant may ask the circuit court for alternative dispute resolution by appointing an impartial third party to serve as an arbitrator to resolve the dispute. The arbitrator shall resolve the dispute within sixty days.

Source: SL 2003, ch 83, § 17.

12-4-44. Time and place of hearing--Notice to parties

The arbitrator shall appoint a time and place for a hearing and serve each party personally or notify each party by registered or certified mail not less than five days before the hearing.

Source: SL 2003, ch 83, § 18.

12-4-45. Subpoena issued by arbitrator--Service and enforcement

The arbitrator may issue subpoenas for the attendance of witnesses and for the production of books, records, documents, and other evidence and may administer oaths. Any subpoena shall be served and enforced in the manner provided by law for the service and enforcement of subpoenas in a civil action.

Source: SL 2003, ch 83, § 19.

12-4-46. Depositions permitted by arbitrators--Compelling testimony

On application of either party and for use as evidence, the arbitrator may permit a deposition to be taken, in the manner and upon the terms designated by the arbitrator, of a witness who cannot be subpoenaed or is unable to attend the hearing. Any provision of law compelling a person under subpoena to testify is applicable.

Source: SL 2003, ch 83, § 20.

12-4-47. Evidence presented by parties--Cross-examination

Unless otherwise provided by an agreement, each party is entitled to be heard, to present evidence material to the controversy, and to cross-examine witnesses appearing at the hearing.

Source: SL 2003, ch 83, § 21.

12-4-48. Adjournment or postponement of hearing--Failure of party to appear

Unless otherwise provided by an agreement, the arbitrator may adjourn the hearing from time to time as necessary and at the request of a party and for good cause. The arbitrator may hear and determine the controversy upon the evidence produced notwithstanding the failure of a party duly notified to appear.

Source: SL 2003, ch 83, § 22.

12-4-49. Issuance of resolution--Delivery to parties

The resolution pronouncement shall be in writing and signed by the arbitrator. The arbitrator shall deliver a copy to each party personally or by registered or certified mail.

Source: SL 2003, ch 83, § 23.

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CHAPTER 1-26

ADMINISTRATIVE PROCEDURE AND RULES

1-26-17. Contents of notice in contested cases

The notice shall include:

- (1) A statement of the time, place, and nature of the hearing;
- (2) A statement of the legal authority and jurisdiction under which the hearing is to be held;
- (3) A reference to the particular sections of the statutes and rules involved;
- (4) A short and plain statement of the matters asserted. If the agency or other party is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter upon application a more definite and detailed statement shall be furnished;
- (5) A statement of any action authorized by law, which may affect the parties, as a result of any decision made at the hearing, whether it be the revocation of a license, the assessment of a fine or other effect;
- (6) A statement that the hearing is an adversary proceeding and that a party has the right at the hearing, to be present, to be represented by a lawyer, and that these and other due process rights will be forfeited if they are not exercised at the hearing;
- (7) A statement that if the amount in controversy exceeds two thousand five hundred dollars or if a property right may be terminated, any party to the contested case may require the agency to use the Office of Hearing Examiners by giving notice of the request to the agency no later than ten days after service of a notice of hearing issued pursuant to § 1-26-17;
- (8) A statement that the decision based on the hearing may be appealed to the circuit court and the State Supreme Court as provided by law.

Source: SL 1966, ch 159, § 9 (2); SL 1978, ch 14, § 1; SL 2003, ch 18, § 3.

1-26-17.1. Intervention in contested case by person with pecuniary interests

A person who is not an original party to a contested case and whose pecuniary interests would be directly and immediately affected by an agency's order made upon the hearing may become a party to the hearing by intervention, if timely application therefor is made.

Source: SL 1978, ch 13, § 5.

1-26-18. Rights of parties at hearings on contested cases--Summary disposition of certain cases

Opportunity shall be afforded all parties to respond and present evidence on issues of fact and argument on issues of law or policy. However, each agency, upon the motion of any party, may dispose of any defense or claim:

(1) If the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and a party is entitled to a judgment as a matter of law; or

(2) At the close of the evidence offered by the proponent of the defense or claim if it determines that the evidence offered by the proponent of the defense or claim is legally insufficient to sustain the defense or claim.

A party to a contested case proceeding may appear in person or by counsel, or both, may be present during the giving of all evidence, may have reasonable opportunity to inspect all documentary evidence, may examine and cross-examine witnesses, may present evidence in support of the party's interest, and may have subpoenas issued to compel attendance of witnesses and production of evidence in the party's behalf.

Source: SL 1966, ch 159, § 9 (3); SL 1972, ch 8, § 19; SL 1978, ch 13, § 6; SL 2002, ch 16, § 1.

1-26-18.3. Request to use Office of Hearing Examiners in certain contested cases

In any contested case, if the amount in controversy exceeds two thousand five hundred dollars or if a property right may be terminated, any party to the contested case may require the agency to use the Office of Hearing Examiners by giving notice of the request no later than ten days after service of a notice of hearing issued pursuant to § 1-26-17.

Source: SL 1995, ch 8, § 18; SL 2003, ch 18, § 1.

1-26-19. Rules of evidence in contested cases

In contested cases:

(1) Irrelevant, incompetent, immaterial, or unduly repetitious evidence shall be excluded. The rules of evidence as applied under statutory provisions and in the trial of civil cases in the circuit courts of this state, or as may be provided in statutes relating to the specific agency, shall be followed. When necessary to ascertain facts not reasonably susceptible of proof under those rules, evidence not otherwise admissible thereunder may be admitted except where precluded by statute if it is of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs. Agencies shall give effect to the rules of privilege recognized by law. Objections to evidentiary offers may be made and shall be noted in the record. Subject to these requirements, when a hearing will be expedited and the interests of the parties will not be prejudiced substantially, any part of the evidence may be received in written form;

(2) A party may conduct cross-examinations required for a full and true disclosure of the facts;

(3) Notice may be taken of judicially cognizable facts. In addition, notice may be taken of generally recognized technical or scientific facts within the agency's specialized knowledge. Parties present at the hearing shall be informed of the matters to be noticed, and those matters shall be noted in the record, referred to therein, or appended thereto. Any such party shall be given a reasonable opportunity on request to refute the officially noticed matters by evidence or by written or oral presentation of authority, the manner of such refutation to be determined by the agency.

Source: SL 1966, ch 159, § 10; SL 1972, ch 8, § 20; SL 1985, ch 15, § 9.

Cal Govt Code, § 11515.

1-26-19.1. Administration of oaths--Subpoena powers--Witness fees--Disobedience of subpoena

Each agency and the officers thereof charged with the duty to administer the laws of this state and rules of the agency shall have power to administer oaths as provided by chapter 18-3 and to subpoena witnesses to appear and give testimony and to produce records, books, papers and documents relating to any matters in contested cases and likewise issue subpoenas for such purposes for persons interested therein as provided by § 15-6-45. Unless otherwise provided by law fees for witnesses shall be as set forth in chapter 19-5 and be paid by the agency or party for whom the witness is subpoenaed.

Failure of a person to obey the subpoena issued pursuant to this chapter may be punished as a contempt of court in the manner provided by chapter 21-34.

Source: SL 1972, ch 8, § 21.

1-26-19.2. Depositions of witnesses

Each agency and the officers thereof charged with the duty to administer the laws and rules of the agency shall have power to cause the deposition of witnesses residing within or without the state or absent therefrom to be taken or other discovery procedure to be conducted upon notice to the interested person, if any, in like manner that depositions of witnesses are taken or other discovery procedure is to be conducted in civil actions pending in circuit court in any matter concerning contested cases.

Source: SL 1972, ch 8, § 22.

1-26-20. Agreed disposition of contested cases

Unless precluded by law, informal disposition may be made of any contested case by stipulation, agreed settlement, consent order, or default.

Source: SL 1966, ch 159, § 9 (4).

1-26-21. Contents of record in contested cases

The record in a contested case shall include:

- (1) All pleadings, motions, intermediate rulings;
- (2) Evidence received and considered;
- (3) A statement of matters officially noticed which have been refuted;
- (4) Questions and offers of proof, objections, and rulings thereon;
- (5) Proposed findings and exceptions;
- (6) Any decision, opinion, or report by the officer presiding at the hearing;
- (7) All staff memoranda or data submitted to the hearing officer or members of the agency in connection with their consideration of the case.

Source: SL 1966, ch 159, § 9 (5); SL 1972, ch 8, § 23.

1-26-24. Tentative or proposed decision served on parties--Contents--Waiver

When in a contested case a majority of the officials of the agency who are to render the final decision have not heard the case or read the record, the decision, if adverse to a party to the proceeding other than the agency itself, shall not be made until a tentative or proposed decision is served upon the parties, and an opportunity is afforded to each party adversely affected to file exceptions and present briefs and oral argument to the officials who are to render the decision. The tentative or proposed decision shall contain a statement of the reasons therefor and findings of fact on each issue and conclusions of law necessary to the proposed decision, prepared by the person who conducted the hearing or one who has read the record. The parties by written stipulation may waive compliance with this section.

Source: SL 1966, ch 159, § 11; SL 1972, ch 8, § 25.

1-26-25. Form, contents and notice of decisions, orders and findings

A final decision or order adverse to a party in a contested case shall be in writing or stated in the record. It may affirm, modify, or nullify action previously taken or may direct the taking of new action within the scope of the notice of hearing. It shall include findings of fact and conclusions of law, separately stated. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings. If, in accordance with agency rules, a party submitted proposed findings of fact, the decision shall include a ruling upon each proposed finding. Parties shall be notified either personally or by mail of any decision or

order. Upon request a copy of the decision or order shall be delivered or mailed forthwith to each party and to his attorney of record.

Source: SL 1966, ch 159, § 12; SL 1978, ch 13, § 8.

1-26-26. Ex parte consultations by agency personnel--Investigating officer disqualified from decision on hearing--Authorized communications

Unless required for the disposition of ex parte matters authorized by law, members of the governing board or officers or employees of an agency assigned to render a decision or to make findings of fact and conclusions of law in a contested case shall not communicate, directly or indirectly, in connection with any issue of fact, with any person or party, nor, in connection with any issue of law, with any party or his representative, except upon notice and opportunity for all parties to participate. If one or more members of a board or commission or a member or employee of an agency, who is assigned to render a decision in a contested case, took part in an investigation upon which the contested case is based, he shall not participate in the conduct of the hearing nor take part in rendering the decision thereon, but he may appear as a witness and give advice as to procedure. If, because of such disqualification, there is no person assigned to conduct the hearing or render the decision, the agency shall appoint someone pursuant to § 1-26- 18.1 to fulfill those duties. A person assigned to render a decision:

- (1) May communicate with other members of the agency; and
- (2) May have the aid and advice of one or more personal assistants.

Source: SL 1966, ch 159, § 13; SL 1974, ch 16, § 9; SL 1975, ch 17, § 10.

1-26-30. Right to judicial review of contested cases--Preliminary agency actions

A person who has exhausted all administrative remedies available within any agency or a party who is aggrieved by a final decision in a contested case is entitled to judicial review under this chapter. If a rehearing is authorized by law or administrative rule, failure to request a rehearing will not be considered a failure to exhaust all administrative remedies and will not prevent an otherwise final decision from becoming final for purposes of such judicial review. This section does not limit utilization of or the scope of judicial review available under other means of review, redress, or relief, when provided by law. A preliminary, procedural, or intermediate agency action or ruling is immediately reviewable if review of the final agency decision would not provide an adequate remedy.

Source: SL 1966, ch 159, § 15 (1); SL 1972, ch 8, § 26; SL 1977, ch 13, § 12; SL 1978, ch 13, § 9; SL 1978, ch 15.

1-26-30.1. Right of appeal when agency fails to act in contested case

The failure of any agency to make and file a decision within a period of thirty days after any matter has been finally submitted to it, entitles a person authorized to appeal from the record then existing as if the decision had been made adversely to him in whole

or in part, unless within such time the agency shall make and serve upon all the parties to the record, an order extending such time for an additional period of not to exceed sixty days, which order shall state the grounds or reasons why such extension is necessary. At the expiration of the thirty days or the time to which extended by such order, such person may present to the agency a proposed decision, and if the same is not adopted within five days after presentation for filing, such person may appeal the same as if such proposed decision had been denied. This section does not apply to contested cases determined by the Public Utilities Commission.

Source: SDC 1939 & Supp 1960, § 33.4202; SDCL, § 21-33-2; SL 1972, ch 8, § 27; SL 1975, ch 17, § 2; SL 1986, ch 27, § 3.

1-26-30.2. Appeal from final action in contested case

An appeal shall be allowed in the circuit court to any party in a contested case from a final decision, ruling, or action of an agency.

Source: SL 1975, ch 17, § 1.

1-26-30.3. Conduct of appeals

Notwithstanding any other provision of law, all appeals authorized by § 1-26-30.1 or 1-26-30.2 shall be taken and conducted pursuant to the provisions of this chapter.

Source: SL 1975, ch 17, § 2.

1-26-32. When agency decision in contested case becomes effective--Application for stay pending appeal--Time--Granting of further stay--Security or other supervision--Inapplicability to determinations of benefits under Title 61

Any agency decision in a contested case is effective ten days after the date of receipt or failure to accept delivery of the decision by the parties. An application to the circuit court for a stay of the agency's decision may be made only within ten days of the date of receipt or failure to accept delivery of the agency's decision. Upon receiving a timely application for a stay and notice of hearing thereon, the court may enter a temporary stay pending a hearing on the application. Following a hearing, the court may order a further stay, pending final decision of the court. The court, as a condition to granting a stay, may require the appellant to furnish a bond or other such security or order supervision as the court may direct to indemnify or protect the state or agency or any person from loss, damage, or costs which may occur during the stay. This section does not apply to determinations of benefits made by the Department of Labor pursuant to Title 61.

Source: SDC 1939 & Supp 1960, § 33.4215; SL 1966, ch 159, § 15 (3); SDCL, § 21-33-10; SL 1972, ch 8, § 33; SL 1975, ch 17, § 7; SL 1988, ch 14, § 2; SL 1999, ch 7, § 2.